

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
CIVIL ACTION NO.: 7:21-cv-00131-BO

ST. JOHN'S EPISCOPAL CHURCH,

Plaintiff,

v.

THE CINCINNATI INSURANCE COMPANY,
SUSAN HUGHES, JACKSON HILL, UNKNOWN
MANAGERS, ADMINISTRATORS, CLAIMS
REPRESENTATIVES AND ADJUSTERS OF
DEFENDANT THE CINCINNATI INSURANCE
COMPANY, GRECCO CONSTRUCTION
CONSULTANTS, LLC, EDT ENGINEERS, P.C.,
and THE CENTURY SLATE COMPANY,

Defendants.

**THE CINCINNATI DEFENDANTS'
MOTION TO RECONSIDER OR IN THE
ALTERNATIVE, MOTION FOR LEAVE
TO FILE INTERLOCUTORY APPEAL
[Fed R. Civ. P. 54(b) and 28 U.S.C. §
1292(b)]**

NOW COME the Defendants, The Cincinnati Insurance Company ("Cincinnati"), Ms. Susan Hughes, and Mr. Jackson Hill (collectively, the "Cincinnati Defendants"), who, by and through their undersigned counsel, jointly and respectfully move this Court pursuant to Fed. R. Civ. P. 54(b), to reconsider and overrule its January 25, 2022 Order denying the Cincinnati Defendants' Motion to Dismiss, or, in the alternative, grant leave to file an interlocutory appeal pursuant to 28 U.S.C. § 1292(b). Though detailed in the contemporaneously filed Memorandum, the bases of this Motion are the following:

Relevant Procedural History

1. On or about June 7, 2021, St. John's Episcopal Church ("Plaintiff") commenced the instant legal action against the above-captioned Defendants, including Defendant Cincinnati and Defendant-Employees Ms. Hughes and Mr. Hill. See *Pl.'s Complaint*, ECF No. 1-1.

2. On or about August 3, 2021, the Cincinnati Defendants filed their Motion and supporting memorandum to Dismiss Plaintiff's IV and V Causes of Action pursuant to Fed. R. Civ. P. 12(b)(6). See *ECF Nos. 14 and 17*.

3. On or about January 25, 2022, this Honorable Court issued an Order regarding the Parties' Motions to Dismiss. Via this Order, the Court denied the Cincinnati Defendants' Motion to Dismiss Counts IV and V of Plaintiff's Complaint. See *ECF No. 32*.

Legal Bases of Cincinnati's Motion to Reconsider

4. Specifically, the Court ruled that "[i]n North Carolina, insurance company employee adjusters owe a duty to an insured plaintiff and may be a proper target of a legal claim." See *ECF No. 32, p. 5 (citing Duck Village Outfitters v. Nationwide Mut. Ins. Co., 2:14-CV-60-FL, 2015 WL 540149 (E.D.N.C. Feb. 10, 2015))*.

5. As detailed in the Cincinnati Defendants' Memorandum in Support, the Court's reliance on the incorrect ruling in *Duck Village* was clearly erroneous because it failed to rely upon black-letter case law in North Carolina that precludes legal claims against an insurer's employees.

6. Additionally, the Court's ruling as to Plaintiff's Fourth Cause of Action for Negligence was clearly erroneous because it is barred by the Economic Loss Rule and it is duplicitous of Plaintiff's Second Cause of Action for Common Law Bad Faith.

7. Accordingly, for each of these reasons, this Honorable Court should reconsider and overrule the decision in its January 25, 2022 Order denying the Cincinnati Defendants' Motion to Dismiss.

8. Should the Court decline to overrule its prior ruling, the Cincinnati Defendants respectfully request that the Court grant Cincinnati, Ms. Hughes, and Mr. Hill leave to file an interlocutory appeal.

WHEREFORE, Cincinnati, Hughes, and Hill respectfully request that this Honorable Court enter an order that commands the following:

1. That Cincinnati, Hughes, and Hill's Motion to Reconsider be granted;
2. That the Fourth Cause of Action of Plaintiff's Complaint be dismissed with prejudice;
3. In the alternative, grant the Cincinnati Defendants leave to file an interlocutory appeal on these issues; and
4. For such other and further relief as this Honorable Court deems just and proper.

This the 14th day of February, 2022.

BUTLER WEIHMULLER KATZ CRAIG LLP

/s/ T. Nicholas Goanos

T. Nicholas Goanos

NC Bar No. 45656

N. Khristyne Rasmussen

NC Bar No. 55223

11605 N. Community House Road, Suite 150

Charlotte, NC 28277

Telephone: (704) 543-2321

Facsimile: (704) 543-2324

Email: ngoanos@butler.legal

ksmith@butler.legal

*Attorneys for Defendants The Cincinnati Insurance Company,
Susan Hughes, and Jackson Hill*

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing **MOTION TO RECONSIDER** by electronically filed with the United States District Court for the Eastern District of North Carolina on the 14th day of February, 2022 by using the CM/ECF system to all parties or their counsel of record as follows:

Eric Poulin
Anastopoulos Law Firm
32 Ann Street
Charleston, SC 29403
Attorney for Plaintiff

Daniel Knight
Jason Herndon
Parke Poe Adams and Bernstein
301 Fayetteville Street, Suite 1400
Raleigh, NC 27601
Attorneys for Grecco Construction Consultants, LLC

Tracy L. Eggleston
Cozen O'Connor
391 South College Street, Suite 2100
Charlotte, NC 28202
Attorney for EDT Engineers, P.C

Deborah J. Bowers
Pinto Coates Kyre & Bowers, PLLC
3203 Brassfield Road
Greensboro, NC 27410
Attorneys for The Century Slate Company

/s/ T. Nicholas Goanos
T. Nicholas Goanos